

March 5, 2019

Mr. Devin Leary
Human & Rohde Inc.
512 Virginia Ave.
Towson MD 21286

Re: Schlegel Property Minor Subdivision
12415 Regwood Rd. Hydes MD 21082
Forest Conservation Variance
Tracking # 03-19-2909

Dear Mr. Leary:

A request for a variance from Baltimore County's Forest Conservation Law for the referenced property was received by the Department of Environmental Protection and Sustainability (EPS) on January 22, 2019. The request proposes to impact three specimen trees for developing a proposed residential lot within a minor subdivision. The 3 trees are an *Acer saccharinum* 32-inches in diameter at breast height (DBH) in fair condition, an *Acer saccharinum* 36-inches DBH in poor condition, and an *Ailanthus altissima* 36-inch DBH in fair condition. A 34-inch *Acer rubrum* in good condition will not be impacted. All of these trees are located adjacent to Regwood Road, but are within the property limits. Also, the trees are not within a forest buffer and are outside of forest. A new driveway and a septic reserve area to serve the proposed lot are proposed within the critical root zones of the trees. The applicant plans to meet forest conservation requirements with on-site retention and afforestation.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to create a 2-lot residential subdivision that includes an existing developed lot. Because there is existing residential use of the property, the petitioner would not be deprived of all beneficial use of the property. Therefore, this criterion is not met.

Mr. Devin Leary
Schlegel Property Minor Subdivision
12415 Regwood Rd. Hydes MD 21082
Forest Conservation Variance
Tracking # 03-19-2909
March 5, 2019
Page 2

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. This variance request is due to a unique situation concerning the location of the specimen trees on the property in relation to the existing and proposed residential uses. Site constraints include the location of required forest buffers, priority forest retention areas, and approvable septic system and well locations. The development proposed is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The development proposes one new residential lot for a single family detached home. The project site is surrounded by single family detached homes, and all existing forest will be retained. Therefore, the proposed residential development of the property would be compatible with the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Forest buffer non-disturbance areas to protect streams and wetlands are required, all forest on-site is being retained, and afforestation on-site is required to complete forest conservation requirements. Also, development must meet stormwater management in accordance with current County regulations. Based on this, this criterion is met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. This request is based on the location of specimen trees in relation to the proposed site improvements. There has been no work conducted on the property that would have required this request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. The development must meet all forest conservation requirements, including forest retention and afforestation within the forest buffer area on the property. Also, mitigation must be provided for the native specimen tree in fair condition. Therefore, this criterion is met.

Based upon our review, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Due to the area of critical root zone impacts, the 3 specimen trees proposed to be impacted must be considered removed. Mitigation for the impacts to the 32-inch DBH *Acer saccharinum* in fair condition must be provided by afforesting an additional 1,810 square

Mr. Devin Leary
Schlegel Property Minor Subdivision
12415 Regwood Rd. Hydes MD 21082
Forest Conservation Variance
Tracking # 03-19-2909
March 5, 2019
Page 3

feet within the required forest buffer. Mitigation will not be required for the tree in poor condition or for the non-native tree. The final forest conservation plan (FCP) for this project must be submitted and approved by EPS prior to minor subdivision approval.

2. On all project plans, label specimen trees as “retain” or “remove” and add the following note:

A forest conservation special variance was granted by Baltimore County Department of Environmental Protection and Sustainability on March 5, 2019 to allow for impacts to 3 specimen trees on this project site. Mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project and by providing additional afforestation. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement at the end of this letter and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

DVL/pad

c: Marian Honeczy MDDNR

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County Forest Conservation Law.

Property Owner(s)

Date

Printed Name(s)

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